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Remarks

Claims 28-30, 32, 34-57, 59, and 61-75 are pending. Claims 28 and 29 are indicated by the Examiner as being allowable. Claims 30, 47, 53, 57, 61-62, 64, 68, and 71 have been amended. Support for the amendment can be found throughout the Specification, and in particular, on page 9, lines 20-26; page 18, lines 5-10; and the claims as originally filed.

The 35 U.S.C. §103 Rejections

The Examiner rejected claims 30-38, 41-43, 47-49, and 53-61, 67 and 71-75 under 35 U.S.C. §103(a) as being unpatentable over Muller (U.S. Patent No. 4,899,762), in view of Krupnick (U.S. Patent No. 5,052,035). Applicant notes that claims 31, 33, 58 and 60 have been previously canceled, rendering their rejection moot.

As amended, the independent claims 30 and 57 recited surgical drapes that are sterile and include "a plurality of uniquely labeled intersections" that are "in the interior of the radio-opaque pattern." None of the cited references disclose such a construction.

The labels of Muller are located only at the periphery of the drape. Nor does Krupnick disclose unique labels located within the interior of the pattern formed thereon. Significantly, neither Muller or Krupnick teach or suggest that either individual intersections be labeled, or that labels are located within the interior of the radio-opaque pattern.

Further, neither Muller or Krupnick disclose a sterile drape or sheet with unique labels. As discussed in Applicants' Specification on page 7, the device in Krupnick is non-sterile, and requires removal after marking the location on the patient. If further marking was required, the use of a Krupnick device would compromise the sterile field.

Thus, the proposed combination of Muller and Krupnick fail to teach or suggest all the limitations of independent claims and their respective dependent claims as required for a proper *prima facie* case of obviousness.

With respect to independent claims 47 and 61, neither Muller or Krupnick teach or suggest that "every intersection of the plurality of intersections comprises one of the radio-opaque labels such that every intersection of the plurality of intersections comprises one of the labeled intersections of the plurality of labeled intersections" as is recited. Rather, the cited references teach patterns in which the labels are limited to the edges or perimeters of the patterns. As a result, labels are not found at every

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intersection as recited in independent claims 47 and 61 and dependent claims 48 and 49.

As for the comments related to "criticality" of the labeled intersections found on page 2 of the Office Action, Applicants note that, in fact, the advantages have been identified for including unique labels within the interior of the radio-opaque pattern on surgical drapes in the Specification. *See, e.g.*, p. 19, lines 11-29. As indicated, accurate identification of the surgical site may be facilitated by including labels at intersections within the interior of the pattern. Actual physical labels located at intersections within the interior of the pattern do not provide the advantages of the labeled intersections and, therefore, cannot be "functional equivalents" to imaginary labels that do not physically exist, but that must, instead, be derived from labels at the edges of a pattern.

With respect to independent claim 53, Applicants note that neither Muller or Krupnick disclose or suggest (alone or in combination) a sterile surgical drape that includes "a central cutout and a slit extending outward from the central cutout" as recited.

It is asserted that Krupnick discloses "a cutout through the grid lines to effectuate a biopsy (see Figure 2 and see col. 5, lines 17-31)." Applicant disagrees. First, the features disclosed by Krupnick are limited to die cut lines in the sheet, not a cutout in the sheet as recited in claim 53. Krupnick does not disclose that any material is removed by the die cutting. Rather, the corners at the die cut intersection must be raised to permit marking of the underlying surgical site. Second, Krupnick does not disclose a line extending outward from a cutout because no cutout itself is disclosed. The Examiner considers a biopsy needle as "a cutout." There is no teaching or disclosure in the references to suggest that insertion of a biopsy needle could provide for removal of sheet material to form a cutout or a line extending outward from the cutout.

For at least the above reasons, Applicant respectfully submits that claims 30-38, 41-43, 47-49, and 53-61, 67 and 71-75 are not *prima facie* obvious over Muller in view of Krupnick.

The Examiner rejected claims 39-40, 44-46, 50-52, 62-66, and 68-70 under 35 U.S.C. § 103(a) as being unpatentable over Muller (U.S. Patent No. 4,899,762) in view of Krupnick (U.S. Patent No. 5,052,035), and Mosby (U.S. Patent No. 5,260,985). Applicant submits that claims 39-40, 44-46, 50-52, and 62-66 are not *prima facie*

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obvious over Muller in view of Krupnick and Mosby for at least the reason that the combination of Muller, Krupnick and Mosby does not teach all of the features recited in those claims.

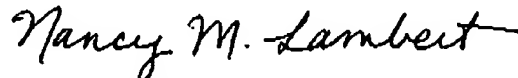
All of claims 39-40, 44-46, and 50-52 depend from one of the independent claims discussed above with respect to the rejection based on only Muller and Krupnick. The addition of Mosby does not address any of the deficiencies of Muller and Krupnick as applied to those independent claims. For that reason alone, Applicant respectfully submits that claims 39-40, 44-46, and 50-52 are patentable over the combination of Muller in view of Krupnick and Mosby. However, Applicant reiterates the arguments submitted with the response filed June 14, 2004.

In view of the above, Applicant respectfully submits that claims 39-40, 44-46, 50-52, and 62-66 are not *prima facie* obvious over Muller in view of Krupnick and Mosby. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested..

Summary

It is respectfully submitted that the pending claims 28-30, 32, 34-57, 59, and 61-75 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,



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